

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YEMISI AKINYEMI, :
Plaintiff, :
: :
v. : 07 CV 4048 (AJP)
MICHAEL CHERTOFF, SECRETARY, :
DEPARTMENT OF HOMELAND :
SECURITY, :
: :
Defendant. :
: :
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DECLARATION OF LUCIA BAEZ

I, Lucia Baez, do hereby state and declare as follows in accordance with the provisions of 28 U.S.C. § 1746:

1. I am employed by U.S. Customs and Border Protection (“CBP”) as a Human Resources Specialist for Labor and Employee Relations (“LER”). I have held this position for CBP or its legacy agency of the U.S. Customs Service since August of 1999.

2. In December 2005, I drafted the letter terminating Plaintiff Yemisi Akinyemi’s employment with CBP for Director of Field Operations Susan Mitchell’s review and signature.

3. Plaintiff Akinyemi was hired under the Federal Career Intern Program (“FCIP”), pursuant to Schedule B, 5 C.F.R. § 213.3202(o), an excepted service appointment. Employees hired by CBP under the FCIP are subject to a two-year trial period. Only after successful completion of this two-year trial period will a FCIP employee be converted to competitive civil service status.

4. Under 5 C.F.R. § 752.401(d)(11), the Code of Federal Regulations excludes employees hired under the FCIP from the group of employees who have MSPB rights if they are terminated from federal employment, unless they are veteran's preference eligible and have one year of current continuous service in the same or similar position.

5. Since Plaintiff Akinyemi was still serving a trial period under the FCIP and was not veteran's preference eligible when she was terminated, she did not have any right to appeal her termination to the MSPB.

6. LER did not inform Plaintiff Akinyemi of her MSPB rights upon her termination because she did not have any MSPB rights.

7. It is also possible to be hired by CBP into a competitive service position under 5 C.F.R. § 315, Subpart H, for Office of Field Operations positions other than CBP Officer and Agriculture Specialists. These employees must successfully complete a probationary period of one year. If CBP terminates a probationary employee serving in a competitive service position prior to the expiration of the one-year probationary period, that employee has the limited MSPB appeal rights enumerated in 5 C.F.R. § 315.806. This section, however, does not apply to Plaintiff Akinyemi.

I declare under penalty of perjury that the foregoing is true and correct based on information, knowledge, and belief.

Executed on March 11, 2008



LUCIA BAEZ